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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88614; File No. SR-ICC-2020-005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

April 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on April 3, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Clearing Participant (“CP”) Default Management Procedures (“Default Management Procedures”). These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to revise the Default Management Procedures, which set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default as well as the actions taken by ICC in connection with such default to close-out the defaulter's portfolio. The proposed revisions update the default contacts that ICC maintains for each CP, include language on the development of the scope of a default management test, and make additional clarification and clean-up changes throughout the document. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes to amend the list of defined terms in Section 2 (Definitions). Specifically, ICC proposes to update the composition of the individuals that comprise ICC management.

The proposed changes to Subsection 4.3.2.1 (Role-Based Contacts) revise certain types of contacts that ICC maintains for each CP in respect of the default management process. Currently, ICC maintains contact information for the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and General Counsel of each CP, as well as other role-based contacts that are specific to the default management process. The

proposed changes remove the requirement that ICC maintain contact information for the CEO, CFO, and General Counsel of each CP in connection with the default management process and instead require ICC to maintain contact information for the most senior person in charge of the CDS business and the most senior person responsible for providing compliance oversight for the CDS business.

In Subsection 4.5 (Default Management Tests), ICC proposes clarification changes regarding the coordination of a default management test, which is a test of ICC's default management process. ICC proposes to clarify that it coordinates default management tests with its Risk Committee and Board, among other external participants. ICC proposes to specify that it conducts a default management test at least every twelve months, rather than once per calendar year. Additionally, the proposed changes direct the ICC Risk Oversight Officer to work with other members of the Close-Out Team, instead of ICC management, to determine the scope of each default management test. The Close-Out Team is responsible for overseeing the default management process and includes ICC management, the most senior member of the ICC Treasury Department, and the ICC Risk Oversight Officer. The proposed amendments also reference proposed Appendix 1 that includes language on the development of the scope of a default management test. The scope would be presented to the Board for review prior to executing the default management test.

In Subsection 6.1.1 (President Pre-Declaration Initiated Actions), ICC proposes to update the contacts that the ICC President notifies of a possible default, including Intercontinental Exchange, Inc. contacts and CP contacts. As discussed above, ICC proposes to replace the requirement that the ICC President contact the CEO or CFO of

each CP that is at risk of defaulting or in default (“Default Risk CP”) with the requirement to contact the default contacts of each Default Risk CP.

ICC proposes updates to Subsection 6.1.5 (CCO Pre-Declaration Initiated Actions) regarding particular actions that occur prior to a declaration of default. The Chief Compliance Officer (“CCO”) works with ICC personnel to draft certain notices for CPs that are used as part of the default management process. Under the amended Default Management Procedures, the Close-Out Team, instead of ICC management, reviews and approves such notices, which are addressed to the default contacts at each Default Risk CP, rather than the CEO, CFO, and General Counsel.

ICC proposes further updates to Subsection 6.4 (Default Declaration Notification) regarding specific actions that follow a default declaration. Under the revisions, the CCO sends certain notices to the default contacts of each defaulting CP, rather than the CEO, CFO, and General Counsel of each defaulting CP. Further, the ICC President is required to notify the Risk Committee and Board, rather than the chairman of the Risk Committee, of the CP that has been declared in default.

ICC proposes a clarification update to Subsection 8.6 (Direct Liquidation) to clarify that certain actions relating to direct liquidation are only taken if ICC obtains Board approval.

Amended Subsection 9.1 (Calling for Assessments) includes a minor update to the procedures for calling for assessment contributions. ICC may call for assessment contributions, which CPs are obligated to meet by providing additional amounts to the Guaranty Fund, in the event that the Guaranty Fund has been depleted or ICC anticipates the need for additional funds related to a default. Currently, ICC distributes notices

calling for assessment contributions to each CP's Execution Coordinator. Such role is responsible for coordinating internally and with ICC for hedging and liquidation related activities. ICC proposes replacing "Execution Coordinator" with "Central Point of Contact," which is a role that has overall responsibility for coordinating internally and with ICC during the default management process and is thus more relevant to the subject task.

In proposed Appendix 1 to the Default Management Procedures, ICC includes language on the development of the scope of a default management test. Specifically, proposed Appendix 1 sets forth key scenario components that ICC may consider when developing a default management test. ICC may supplement the list of factors included in this appendix from time to time as it identifies additional factors to test. This appendix considers (1) scenarios resulting in CP defaults, such as a CP's failure to meet payment obligations to ICC, insolvency or bankruptcy; (2) default management tools available to ICC in case of default, including consulting with the CDS Default Committee or performing Secondary Default Management Actions (e.g., calling for assessment contributions); (3) timing considerations, such as the time and length of a default event; (4) planning strategy (e.g., whether there is advance notice of a test); and (5) event specific elements that may occur in a default scenario, such as the occurrence of multiple CP defaults or stressed market conditions.

ICC proposes other non-material changes that would fix typographical or grammatical errors by amending:

- Section 4 (Operational Readiness), to replace "described" with "describes" in the phrase "This section described the steps taken."

- Subsection 4.4 (Secure Trading Facility), to replace “review” with “reviewed” in the phrase “periodically review by the Risk Department.”
- Subsection 4.5 (Default Management Tests), to add “to” to the phrase “also be included.”
- Subsection 5.2 (Close-Out Team Activation), to add “to” to the phrase “Default Risk Alert the President.”
- Subsection 6.1.3 (COO Pre-Declaration Initiated Actions), to add “and” to the phrase “the Court a no action.”
- Subsection 6.4 (Default Declaration Notification), to replace “confirm” with “confirms” in the phrase “and confirm with.”
- Subsection 7.3 (Initial CDS Default Committee Meeting), to replace “provide” with “provides” in the phrase “ICC provide” and replace the phrase “receive” with “receives” in the phrase “ICC receive.”
- Subsection 9.1 (Calling for Assessments), to remove “are subject” from the phrase “CPs are subject are considered.”
- Subsection 9.2 (Initiating a Cooling-Off Period), to replace “Colling-Off Period” with “Cooling-Off Period.”
- Subsection 9.3 (Liquidation by Secondary Auction), to replace “addition” with “additional” in the phrase “on or more addition CP Default”; remove an unfinished sentence; and replace “extend” with “extent” in the phrase “to the extend.”
- Subsections 9.4 (Entering a Loss Distribution Period) and 9.5 (Continuing a Loss Distribution Period), to remove reference to a section that does not exist.

- Subsection 9.7 (Termination of Clearing), to replace “Partial Tear-Up” with “Termination” in the phrase “Partial Tear-Up Circular.”
- Subsection 10.7 (Execute Transfers), to change the title to “Execution of Transfers.”

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>3</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F)<sup>4</sup>, because ICC believes that the proposed rule change enhances ICC’s ability to manage the risk of a default by providing updates and additional clarity with respect to ICC’s default management process and procedures. The amendments to the Default Management Procedures update the default contacts that ICC maintains so relevant individuals are notified and can take timely action as part of the default management process. Proposed Appendix 1 includes language on the development of the scope of a default management test and sets forth key scenario components that ICC may consider, which promotes robust and effective default

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<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>4</sup> Id.

management tests. The clarification and clean-up changes throughout the document ensure that the documentation of ICC's Default Management Procedures remains up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's default management process. ICC believes that such changes augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.<sup>5</sup>

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.<sup>6</sup> Rule 17Ad-22(b)(3)<sup>7</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The proposed

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<sup>5</sup> Id.

<sup>6</sup> 17 CFR 240.17Ad-22.

<sup>7</sup> 17 CFR 240.17Ad-22(b)(3).



revisions update certain types of contact information that ICC maintains as part of the default management process to ensure that relevant individuals are notified and can take timely action. The proposed revisions further include language on the development of the scope of a default management test in Appendix 1, which promotes robust and effective default management tests that ensure operational readiness by ICC and its CPs to execute the default management process. ICC believes that such changes strengthen ICC's ability to manage its financial resources and withstand the pressures of defaults, including by ensuring that relevant individuals are notified and can take timely action during the default management process and through robust and effective default management tests that enhance ICC's ability to manage financial stress from CP defaults, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad-22(b)(3).<sup>8</sup>

Rule 17Ad-22(d)(4)<sup>9</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in relevant part, identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity. The proposed amendments provide additional clarity and detail regarding the coordination of default management tests, including by specifying that ICC conducts a default management test at least every twelve months; clarifying that ICC receives input from relevant stakeholders, including the Board, Risk

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<sup>8</sup> Id.

<sup>9</sup> 17 CFR 240.17Ad-22(d)(4).

Committee, and the Close-Out Team; and adding proposed Appendix 1 that promotes robust and effective default management tests. Such testing and preparation strengthens ICC's ability to detect and manage financial stress from CP defaults and allows ICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity, consistent with the requirements of Rule 17Ad-22(d)(4).<sup>10</sup>

Rule 17Ad-22(d)(8)<sup>11</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>12</sup> applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. The Default Management Procedures clearly assign and document responsibility and accountability for default management actions and decisions. The proposed revisions allow for feedback from, and notification to, relevant stakeholders, such as the Board, Risk Committee, and the Close-Out Team. The proposed changes note the coordination of a default management test with the Risk Committee and Board, the review of the scope of a default management test by the Board, the notification to the Risk Committee and Board of the CP in default, and the input of the Close-Out Team on various default management matters. These governance arrangements are clear and transparent, such that

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<sup>10</sup> Id.

<sup>11</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>12</sup> 15 U.S.C. 78q-1.

information relating to the assignment of responsibilities and the requisite involvement of the Board, relevant committees, and ICC personnel is clearly documented, and also promote the effectiveness of ICC's risk management procedures by detailing the responsibilities of relevant stakeholders throughout the Default Management Procedures, consistent with the requirements of Rule 17Ad-22(d)(8).<sup>13</sup>

Rule 17Ad-22(d)(11)<sup>14</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Default Auction Procedures - Initial Default Auctions, and the Secondary Auction Procedures are publically available on ICC's website. The proposed changes to the Default Management Procedures update certain contacts that ICC maintains so relevant individuals are notified and can take timely action as part of the default management process. Additionally, the proposed changes clarify and augment ICC's default management process and enhance ICC's ability to withstand defaults and continue providing clearing services, including by promoting robust and effective default management tests that ensure operational readiness by ICC and its CPs through the additional detail included in proposed Appendix 1 and by making clarification and clean-up changes to ensure that the documentation of ICC's Default Management Procedures remains up-to-date,

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<sup>13</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>14</sup> 17 CFR 240.17Ad-22(d)(11).

transparent, and focused on clearly articulating the procedures used to support ICC's default management process, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad-22(d)(11).<sup>15</sup>

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the ICC Default Management Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>15</sup> Id.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2020-005 on the subject line.

##### Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C 20549.

All submissions should refer to File Number SR-ICC-2020-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2020-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

